

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MB Docket No. 02-136
Table of Allotments,)	RM-10458
FM Broadcast Stations.)	
(Arlington, The Dalles, and Moro Oregon, and)	
Covington and Trout Lake, Washington))	

NOTICE OF PROPOSED RULE MAKING

Adopted: May 29, 2002

Released: June 7, 2002

Comment Date: July 29, 2002

Reply Comment Date: August 13, 2002

By the Assistant Chief, Audio Division:

1. The Audio Division has before it a petition for rule making filed jointly by Mid-Columbia Broadcasting, Inc. ("Mid-Columbia") licensee of Station KMCQ(FM), ("KMCQ"), Channel 283C3, The Dalles, Oregon and First Broadcasting Company, L.P. ("FBC")¹ ("Joint Parties"). The Joint Parties seek to amend the FM Table of Allotments by changing the community of license of Station KMCQ from The Dalles, Oregon to Covington, Washington, and to modify Station KMCQ's license accordingly. In order to provide service to unserved and underserved areas resulting from this reallocation, the Joint Parties request the allotments of Channel 283C1 to Moro, Oregon, Channel 261C2 to Arlington, Oregon, and Channel 226A to Trout Lake, Washington, as first local aural transmission services. FBC states that it will apply for the foregoing channels, if allotted to those communities, and construct facilities thereon as authorized.

2. The Joint Parties seek to invoke the provisions of Section 1.420(i) of the Commission's rules which permits the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest.² The requested reallocation from The Dalles, Oregon, to Covington, Washington, is mutually exclusive with Station KMCQ's existing authorization.

3. The Joint Parties assert that the adoption of its proposal will result in a preferential arrangement of allotments consistent with the Revision of FM Assignment Policies and Procedures,

¹ FBC is the holder of an option to purchase Station KMCQ.

² See Modification of FM and TV Authorizations to Specify a New Community of License, 4 FCC Rcd 4870 (1989), recon. granted in part, 5 FCC Rcd 7094 (1990).

90 FCC 2d 88 (1982),³ by providing Covington, Washington (population 13,783),⁴ with its first local aural transmission service. We note that the allotment of Channel 283C3 to Covington would not deprive The Dalles (population 12,459) of its sole local transmission outlet, because The Dalles would continue to be served by four local transmission services. Further, the allotments of Channel 283C1 to Moro, Oregon (population 337), Channel 261C2 to Arlington, Oregon (population 524), and Channel 226A to Trout Lake, Washington (population 494)⁵ would provide each community with its first local aural transmission service.

4. Covington is within the Seattle Urbanized Area. In accordance with Commission policy, if a rulemaking proponent intends to move its authorized facility to a community that is within an Urbanized Area, the proponent is required to demonstrate that the intended city of license is sufficiently independent of the central city to justify a first local service preference.⁶ Mid-Columbia and FBC have provided a Tuck analysis to demonstrate that Covington is sufficiently independent of Seattle to merit a first local service preference.⁷ We believe that their proposal warrants consideration since the allotment of Channel 283C to Covington, Washington, could provide a first local aural transmission service to Covington.

5. Since the Joint Parties' reallocation request is consistent with the provisions of Section 1.420(i) of the Commission's Rules, we shall propose to modify the authorization of Station KMCQ without entertaining competing expressions of interest in the use of Channel 283C3 at Covington, Washington, or requiring the Joint Parties to demonstrate the availability of an additional equivalent channel for use by other parties.

6. The Joint Parties have provided sufficient information to demonstrate that the communities of Moro, Oregon and Arlington, Oregon, each constitute a "community" to which an FM channel can be allotted pursuant to Section 307(b) of the Communications Act of 1934, as amended. Both of those entities are incorporated communities that are self-governed, provide many municipal services, contain several commercial organizations, and have their own post offices and zip codes. Trout Lake, however, is not incorporated, and appears to have no civic organizations. The material submitted does not indicate that Trout Lake is self-governed or provides any municipal services. Therefore, the Joint Parties are requested to submit additional information that indicates that Trout Lake, Washington, is a community entitled to an FM

³ The allotment priorities are: (1) first full-time aural service; (2) second full-time aural service; (3) first local service and (4) other public interest matters [co-equal weight is given to priorities (2) and (3)].

⁴ Population figures for Covington and The Dalles are taken from the 2000 U.S. Census. Covington is an incorporated city that has its own post office and zip code, its own local government and police department, and several businesses and churches.

⁵ The population figures for the preceding three communities are taken from the 2000 U.S. Census.

⁶ See, e.g., Parker and St. Joe, Florida, 11 FCC Rcd 1095 (1995).

⁷ See Huntington Broadcasting Co. v. F.C.C., 192 F. 2d 33 (D.C. Cir 1951), RKO General, Inc. ("KFRG"), 5 FCC Rcd 3222 (1990), and Faye and Richard Tuck ("Tuck"), 3 FCC Rcd 5374 (1988).

allotment pursuant to Section 307(b) of the Communications Act of 1934, as amended.

7. Consistent with the technical requirements of the Commission's Rules, Channel 283C3 can be allotted to Covington, Washington, at the Joint Parties' specified site, utilizing coordinates 47-12-02 NL and 122-00-27 WL, with a site restriction 18.3 kilometers (11.4 miles) northeast of Covington, Washington.⁸ Channel 283C1 can be allotted to Moro, Oregon, at the Joint Parties' specified site, utilizing coordinates 45-29-03 NL and 120-43-48 WL. Channel 261C2 can be allotted to Arlington, Oregon, at the Joint Parties' specified site, utilizing coordinates 45-43-01 NL and 120-11-59 WL. Channel 226A can be allotted to Trout Lake, Washington, at the Joint Parties' specified site, utilizing coordinates 45-58-38 NL and 121-32-11 WL. This site is located 2.3 kilometers (1.5 miles) south of Trout Lake, Washington.

8. Accordingly, we seek comments on the proposed amendment to the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the communities listed below, as follows:

<u>Channel Nos.</u>		
<u>City</u>	<u>Present</u>	<u>Proposed</u>
The Dalles, Oregon	224C3, 244C3, 249C2, *268C3, 283C3	224C3, 244C3, 249C2, *268C3
Covington, Washington	-----	283C3
Arlington, Oregon	-----	261C2
Moro Oregon	-----	283C1
Trout Lake, Washington	-----	226A

9. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

10. Pursuant to Sections 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before July 29, 2002, and reply comments on or before August 13, 2002, and are advised to read the Appendix for the proper procedures. Comments should be

⁸ It appears that there may be a site obstruction in the radial path between the Covington site and the city of Covington. The Joint Parties are requested to demonstrate how 70 dBu coverage will be provided over the entire city of Covington, as required by Section 73.315 of the Commission's Rules.

filed with the Federal Communications Commission, Office of the Secretary, 445 Twelfth Street, SW, TW-A325, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the Joint Parties' counsel, as follows:

J. Dominic Monahan, Esq.
Luvaas Cobb Richards & Fraser, PC.
777 High Street, Suite 300
Eugene, Oregon 97401
(Counsel for Mid-Columbia Broadcasting, Inc.) and

Mark N. Lipp, Esq.
Shook, Hardy & Bacon, LLP.
600 14th Street, NW; Suite 800
Washington, D.C. 20005
(Counsel for First Broadcasting Company, L.P.)

11. Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail or Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

12. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

13. For further information concerning this proceeding, contact R. Barthen Gorman, Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding.

However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment, which has not been served on the petitioner, constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment that has not been served on the person(s) who filed the comment to which the reply is directed, constitutes an ex parte presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief, Audio Division
Office of Broadcast License Policy
Media Bureau

Attachment: Appendix

APPENDIX

1. Pursuant to authority contained in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off Procedures. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Information Center (Room CY-A257), at its headquarters, 445 Twelfth Street, SW, Washington, D.C.